

REMARKS/ARGUMENTS

In the Office Action mailed July 2, 2003, claims 1-17 were rejected. Applicants have thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the references cited therein. The following remarks are believed to be fully responsive to the Office Action. All the pending claims at issue are believed to be patentable over the cited references.

CLAIM REJECTIONS – 35 U.S.C. § 112

Examiner rejected claims 1-9 and 14 under 35 U.S.C §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In light of the amendment to claims, Applicant hereby respectfully requests that the rejection to these claims be removed.

CLAIM REJECTIONS – 35 U.S.C. § 102(b)

The Examiner rejected claims 1-8 under 35 U.S.C. §102(b) as being unpatentable over German Patent DT 2007791 to Louis (hereinafter referred to as "Louis"). In light of the following remarks, Applicants respectfully submit that these claims are allowable.

Initially, Applicants note that it is axiomatic that to qualify as an anticipation under Section 102, the cited reference must "bear within its four corners adequate directions for the practice of the patent invalidated." (See, for example, Dewey & Almay Chemical Co. v. Mimex Co., Inc., 52 U.S.P.Q. 138 (2nd Cir. 1942)). Applicant respectfully submits that Louis embodies no such directions.

More particularly, Applicants respectfully submit that Louis does not disclose a blood bag support structure for refrigerators. The independent claim 1 has been amended to clarify that the invention relates to vertically mounted support structures. The claims have been amended to explicitly state that which has been implicitly in the original claim language. As such, the claim has not been narrowed.

Examiner states that Louis discloses a frame 1 with peripheral rails 1, 6 and transverse rails, slotted strips 2 being mounted to the cabinet and brackets 5 with u-shaped channels 8 and 8a which support the frame and connect to a slide 3-4 that engages strips or a guide. Louis discloses a dishwasher rack structure and slide mechanism only.

Applicants claim an apparatus that includes a frame having rails arranged for the item to be suspended therefrom; a plurality of slotted strips vertically mounted to the cabinet; and a plurality of brackets, wherein each bracket engages the slotted strips and supports the frame. Applicants note that Louis, first and foremost, does not disclose a plurality of slotted strips vertically mounted to the cabinet. Louis shows horizontal guides 2 only. For anticipation under 35 U.S.C. §102 the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present (M.P.E.P. 706.02). Since each and every element, as set forth in the claim, is not found either expressly or inherently described as required by M.P.E.P., Louis cannot be said to anticipate a blood bag support structure for refrigerators of the present invention as claimed.

In light of the foregoing arguments, withdrawal of the rejection of claims 1-8 under 35 U.S.C. § 102(b) as being clearly anticipated by Louis is respectfully requested.

CLAIM REJECTIONS – 35 U.S.C. § 103(a)

The Examiner rejected claims 9-17 under 35 U.S.C. § 103(a) as being obvious over Louis in view of United States Patent No. 3,844,416 to Potter. (hereinafter referred to as “Potter”).

The Examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. *MPEP* §2142. To establish a prima facie case of obviousness, three criteria must be met. First, there must be some suggestion or motivation, to modify the references or to combine reference teachings. Second, there must be reasonable expectation of success. Finally, the prior art must teach all the claim limitations. *MPEP* §2142. In light of the argument regarding the Louis reference, the combined references do not teach or suggest all the claim limitations of the present application.

Applicants respectfully point to the final prong of the test, which states the prior art must teach all the claim limitations. At the very least, the combined references do not teach all of the limitations of independent claims 1 and 12 because of the arguments set forth regarding the Louis reference in the anticipation section of this response.

Additionally, Applicants note that Examiner has cited the Potter reference to reject those claims that include a height adjusting means. Potter describes a system whereby media storage may be suspended at selected levels.

Applicants invention uses a storage structure that is height adjustable for quite a different purpose. Furthermore, it is unclear how the teachings of Potter could be utilized by Louis since the structure of a dishwashing machine having fixed slidable levels would not require the teachings of a vertically adjustable levels of a media storage apparatus as taught by Potter. Such

a combination would clearly destroy the primary reference of Louis and fail the second prong of the test, which states there must be reasonable expectation of success.

As a result, the obviousness rejection is improper since independent claims 1 and 12 are allowable all claims which depend from them are allowable. Additionally, the Louis and Potter references, independently or combined do not support a finding of obviousness since they do not teach all the elements of the claims. Therefore, Applicants respectfully request that the rejection to claims 9-17 which are based upon the Louis and Potter references, be removed.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully requests objections and rejections. If, for any reason, the Examiner disagrees, please call the undersigned at 202-861-1748 in an effort to resolve any matter still outstanding before issuing another action. The undersigned is confident that any issue which might remain can readily be worked out by telephone.

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Patent

In the event this paper is not time filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036.

Respectfully submitted,

BAKER & HOSTETLER LLP

A handwritten signature in black ink, appearing to read "Sean A. Pryor". The signature is fluid and cursive, with the first name "Sean" and last name "Pryor" clearly distinguishable.

Sean A. Pryor
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Date: November 3, 2003
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